

SENATE....No. 105.

Commonwealth of Massachusetts.

The Joint Standing Committee on Railways and Canals, to which was referred the Petition of the New Haven and Northampton Company, praying for leave to discontinue the Hampshire and Hampden Canal, and for authority to construct a railroad from the State line at the point where the railroad from New Haven will terminate, and extending to the Western Railroad, with a view to unite the same therewith, either in Westfield or Springfield, as the petitioners might deem expedient,

R E P O R T :

That, in the year 1822, the Legislature of Connecticut incorporated the President, Directors and Company of the Farmington Canal, with power to construct a canal from the tide waters of the harbor in New Haven to the line of the State of Massachusetts, at Southwick. In the year 1823, the Legislature of Massachusetts incorporated the Hampshire and Hampden Canal Company, with power to construct a canal from Northampton to the State line at Southwick. Both canals were constructed, and opened for business; the corporations soon became embarrassed, and subsequently, from inability to sustain their canal, failed.

2 NEW HAVEN AND NORTHAMPTON CO. [March,

In April, 1836, the New Haven and Northampton Company was incorporated in Massachusetts, for the purpose of receiving the transfer of the rights, privileges and powers of the old companies, and of securing, as far as possible, the interest, both of stockholders and creditors of the former companies, and of putting and keeping the canal in repair. The capital stock was declared to be three hundred thousand dollars, divided into shares of twenty-five dollars each, of which one hundred and thirty-five thousand dollars was to be paid in cash. The creditors of the two companies were allowed, within six months from the organization of the new company, to subscribe the amount of their claims, (the same being first liquidated,) to the stock of this company, upon such terms as the new company should prescribe.

A similar act was passed in the state of Connecticut, in June, 1836. And provision was made, in both acts, that the old companies, upon payment of their debts, and all money expended upon the canal, with interest and expenses, should be entitled to resume possession of the canal, and hold the same as before the transfer. The New Haven and Northampton Company operated the canal until 1847; since when it has not been used for purposes of navigation.

By the original charters, power was given to employ and use, as reservoirs or feeders for supplying the canal with water, the different ponds, rivers, and streams of water, near or over which the canal should pass, and, to save the floods and other waters, by the construction of artificial reservoirs, with the liberty of erecting, on the waters connected with the canal feeders and reservoirs, mills and other works. Under the above authority, feeders or reservoirs were constructed in Southwick, Westfield, and Russell; and mills have been erected, and contracts made for water power, created under the act of incorporation; and the company have a dam and embankment in the town of Russell, which, it is objected, they have no power to maintain, as their charter does not give authority to pass through that town.

In May, 1846, the Northampton Company was authorized, by the Legislature of Connecticut, to construct a railroad from

New Haven “northerly, along or near the line of the Farmington Canal, to some convenient point in the town of Farmington, with liberty to extend the same, on or near the line of said canal, to the north line of this State.” The company was authorized to increase their capital stock, to the extent of nine hundred thousand dollars. The construction of this road was immediately commenced, and was opened for travel to Plainville, four miles below Farmington, on the 31 December, 1847, and to Farmington, in the autumn of 1848.

The capital stock of the New Haven and Northampton Company was divided into twelve hundred shares, valued by the company at twenty-five dollars each. In the act authorizing the construction of the railroad, the par value of the shares is fixed at one hundred dollars, by the addition of seventy-five dollars to each share of the old stock. Upon these shares, assessments have been laid, to the amount of fifty dollars per share; and the expenses for constructing the road, as appears by the report of the directors, has been \$613,189 37. In 1848, the Legislature of Connecticut authorized this company to extend their railroad from Plainville to the State line at Hartland or Colebrook, and to hold such number of steamboats, to be used in connection with their canal and railroad, as might be deemed expedient, and increased the capital to an amount not exceeding five hundred thousand dollars. This authority was granted, in answer to a petition which asked, among other things, for the privilege of extending their road from Farmington, northerly, to the line of the State, in either the town of Granby or Suffield, diverging from the line of the canal. Of this branch of the petition, no notice is taken by the Legislature in the acts above named.

In October, 1848, the stockholders of the company accepted the proposal of its president and superintendent “for building the entire road, from the bridge over the Farmington river to the State line in Granby, and thence to the Western Road, as soon as permission is obtained from Massachusetts, in a manner corresponding with the road already in operation for the 5,000 shares of the new capital.” This route has been surveyed through the state of Connecticut, entering Massachusetts

from the town of Suffield, in the former state, near the corner of Southwick, thence by Feeding Hills, to the West Springfield station, on the Western Railroad. By this route, the line of the canal is left four and a half miles south of the State line, and its intersection with the Western Road is about six miles from the canal in Westfield. It is contemplated, by the petitioners, to proceed from this point of intersection, upon the Western Road, or upon a separate track, to the town of Springfield, its trains to connect with those upon the Western Road, to and from Boston.

From the line of the State to the proposed intersection of the Western Road, at West Springfield, the proposed line, by the engineer's report, is 4 95-100 miles. The curvatures are not inconvenient; and it has a grade, for 3 12-100 miles, of forty feet to the mile. The remainder of its grade is thirty-one, and twenty-six feet, respectively, with the exception of 27-100 mile of level.

The entire distance of the line from New Haven to Springfield, by the proposed route, was not satisfactorily settled. By the map, it is from three to five miles longer than the present route. By the admeasurement of Mr. Ritner, the proposed line is 58 52-100 from New Haven to the point of intersection at West Springfield, from whence to Springfield, is about $4\frac{1}{2}$ miles. But this witness testified that Farmington depot, which is 32 miles from New Haven, was nearer New Haven than Springfield; and that fact is, we think, inconsistent with the correctness of his admeasurement.

The selectmen, and the citizens, from five towns in the vicinity, have remonstrated against the discontinuance of the canal, as prayed for, and these remonstrants, and others, were heard before the committee.

The petitioners asked for the discontinuance of the canal, upon the ground that it was now out of repair, and had not been used for upwards of a year; that the business it was designed to accommodate had been diverted from it by the steamboats upon the Connecticut River, and more recently by the Connecticut River and the Hartford and New Haven Railroads, and that the company did not intend to put it again in repair.

The remonstrants made no denial of these facts, and did not suppose that the canal would ever be used again, but they asked that the company should not be allowed to discontinue it, and dispose of their property, until all the claims against the company were adjusted, and the rights of all persons who must be injuriously affected by the abandonment of the canal, were first secured.

It appeared that a bill in equity is now pending against the company, in favor of the Metteneag Manufacturing Company, for diverting the water from the last named corporation. The town of Russell claimed that the town had suffered damage by injury to the highway therein, in consequence of the overflow of the water upon it, caused by the erection of the dam before-mentioned.

Objections were made to the removal of materials from the adjoining lands, and to the situation in which the roads would be left that now cross the canal.

Individuals living upon streams that have been diverted to create feeders, claimed that, by the discontinuance of the canal, the right to use the water reverted to those from whom it had been taken, and that, if they could not avail themselves of its use from the canal or feeders, it should be turned back to its ancient bed. The investigation of these claims satisfied the committee that it was in the power of the company to adjust them with the remonstrants, and that it was incumbent upon the corporation so to do, before obtaining leave to discontinue the canal. When this settlement shall have been effected, and the towns satisfied as to the situation in which the canal will be left, there can, it is presumed, be no valid objection to allow the canal to be discontinued.

And, with a view of affording an opportunity to the petitioners, to adjust, before the adjournment, the conflict of interest now existing in Westfield, the committee defer a definite report upon so much of the petition as relates to the canal.

In their application for the railroad, the petitioners contended that the Legislature of the State of Connecticut had, so far as that State was concerned, settled the question of exigency, and that the comity due to a sister state, required that a charter

should be granted to extend the line to the proposed terminus, in Massachusetts. That the canal had occasioned great loss to its proprietors, who should now be permitted to avail themselves of the new mode of travel by railroad, and thereby, if possible, in some degree to remunerate themselves for their losses. That the introduction of steamboats upon the Connecticut river had greatly injured the business of the canal, and these, in their turn, had been thrown out of employ by the construction of the Hartford and New Haven Railroad. That, by granting the charter applied for, the monopoly of the Hartford and New Haven line would be destroyed, which was itself competing for the travel from New Haven to New York.; that the proposed route would be exclusively a land route, and subject to no delays from a connection with steamboats. That the public demanded a morning train to New York, and also, one leaving Boston about two o'clock, P. M., by which the mail between the two cities shall be transmitted.

The committee regard the decision of the state of Connecticut as conclusive, within its own limits, upon the question of exigency, and would cheerfully recommend that a liberal policy should be pursued by this Commonwealth in all questions touching the intercourse between her and her sister states. But the propriety of every grant applied for from this state, must, of course, be decided by its Legislature, under its own sense of right; and, in this case, it is not apparent to the committee that the rule of state comity can be appealed to, to favor the application of the petitioners; for it will be seen that, by their charter, they were to build a railroad on or near the line of the canal, to the north line of the state. A fair construction of this charter requires that the railroad should be built as near the line of the canal as it may reasonably and properly be done; and this construction is strengthened from the fact that the petitioners, in their application to the Legislature of Connecticut, for their charter for the railroad, represented that they possessed peculiar advantages for the construction of a railroad along the line of their canal; that the same could be constructed at an expense small in comparison with that usually incident to such works; that they had the right of way for a

road in themselves, and a track already nearly graded upon a great portion of their tow-path, and that they wished for a grant to run through certain specified towns, to the state line, at *Granby*. That the petitioners understood that their route was through the town of *Granby*, is apparent from the report of the directors of the company for the year 1848, which, in speaking of the proposal for building the line from Farmington, north, they speak of it as running “to the state line, in Granby;” and there exists the further fact, that, in 1848, this company, by their secretary, petitioned the Legislature of Connecticut for the privilege of extending “their railroad from Farmington northerly, to the north line of the state, in either the town of Granby or Suffield, *diverging from the line of their canal.*”

To the mind of the committee, these facts furnish evidence that it was the understanding of the petitioners, and of the Legislature, that the charter was granted to be laid upon or near the line of the canal. And this evidence is much strengthened by the consideration, that the stock of the old canal was considered, by the Legislature, as worth three hundred thousand dollars, for the purpose of constructing a road,—an amount far exceeding its proved value for any other use known to the committee. Had the petitioners asked for a railroad, on or near the line of their canal, from Granby, through Southwick, to Westfield, it would have presented the question of State comity fairly to our consideration; and there were many circumstances connected with the history of the canal, and its injurious effects upon the inhabitants on its route, that would have commended it to the favorable consideration of the committee. But the petitioners, at the hearing, disclaimed any idea of going to Westfield, and they decline receiving a charter for a road running through that town; and it was not pretended that the proposed railroad in Massachusetts could derive any advantage from the canal bed, or other property, in this State. They did, indeed, assert, that there would be some local business for the road; but the prominent idea held forth was, a road to accommodate the through travel from Boston to New York. The committee think that these petitioners, by varying from the line of their canal in Massachusetts, cannot stand,

with their application, upon any better ground than could individuals petitioning for the same route. The loss which they have suffered is to be deplored; but it must be remembered, that they are not the only sufferers by the canal, and it is worth remarking, that, while the petitioners are proposing to abandon the line of the canal in Massachusetts, by the proposed route, their property in the canal, valued in their Connecticut capital stock at \$300,000, was, to a large extent, (more than one half,) purchased at twenty per cent. upon the dollar of that valuation. Upon an application, in Massachusetts, to change their canal into a railroad upon the same line, to an extent not injuring other interests, they would present considerations entitled to favorable consideration; but, upon the position taken by them at the hearing, the committee think that they must make out a case for a public exigency upon the same principles that have heretofore governed the legislation of this Commonwealth, and that the diversion of the travel from the Farmington valley, by other enterprises and improvements, is not a reason why Massachusetts should depart from her settled policy in the granting of railroad charters.

The question, then, is brought to this, Is it expedient to grant a charter to this corporation, enabling it to build a railroad, of about five miles long, in this State, through a territory here, affording but little local travel, which road, when constructed and connected with a contemplated road in Connecticut, will open a line of railroad from New Haven to Springfield in direct and avowed competition with the Hartford and New Haven Railroad, upon a line claimed by the petitioners, to be equally feasible, of about the same length, and contemplating the same termini for each? Undoubtedly, a state of facts might exist which would call upon the Legislature to make the grant; for, if the Hartford and New Haven Road could not accommodate the public travel upon its route, or if, with an ability to afford all reasonable accommodation, it should, from perverseness, refuse to do so, it would be the duty of the Commonwealth to provide for the then existing exigency by opening another road upon any feasible route.

The ability of the Hartford and New Haven road to accom-

modate the public travel and transportation upon its entire route, as well as the passengers seeking its line, was not questioned; and the fact that one road, with a double track, was preferable to two roads with single tracks, was also established.

The committee have been unable to discover any force in the objection, that the Hartford and New Haven line was not exclusively a land route. On the contrary, the argument seems strong in favor of a choice of routes on arriving at New Haven; and, if it were not, it is difficult how a steamboat line, connecting with the railroad, can prove a disadvantage, unless such connection should occasion delay. The arrangements, in regard to connecting at New Haven with the New York and New Haven Railroad, are such as avoid any material delay in travelling south. The passengers merely change cars and proceed at once to New York. In travelling north, the regulations are, that the passengers by the New York and New Haven trains proceed on, if they arrive at the time or within fifteen minutes of the arrival of passengers by steamboat,—the mail, coming by the latter route, requiring this arrangement. If the New York train arrive before the boats are in sight, they proceed on. If the boat is in sight, they are detained fifteen to twenty minutes for her arrival. If the passengers by boat and the New York and New Haven train travel together, the through passengers, from both the steamboat and cars, go by express train. If they arrive and travel on separately, both trains become accommodation trains, stopping at way-stations. To this arrangement, the committee see no objection. It appears to be settled with a due regard to the convenience of the public. Some preference would naturally be given to the mail, and the short detention to await its arrival may well be justified by the importance of the subject, and is of itself not indicative of any desire to incommode the public or prejudice the New York and New Haven Railroad.

It was further objected, that the two roads were not united by their tracks, and that the cars did not run through, and that this was an inconvenience; and that no station house had been erected at the point where the respective trains stopped, for the delivery and receipt of passengers. These two objections, it is

apparent, may be easily removed, and a due regard to the interests of both corporations will compel the respective directors to make, upon this subject, such arrangements as the public necessity shall require. It did not appear to the committee, that the Hartford and New Haven company were responsible for these alleged inconveniences.

Although it was asserted, at the hearing, that one of the objects to be gained by the charter of the proposed route, was a train of cars from Boston to New York, leaving the former place at about two o'clock in the afternoon, yet it was not pretended, that the Hartford and New Haven Company had ever opposed such an arrangement, while it did appear, that they were anxious to make such an one. The coöperation of the Western and Boston, and Worcester corporations would be required, in order to carry out this object. But it did not appear, that any application had been made to either, upon the subject; and an intelligent witness, largely connected with railroads, testified, that the afternoon train, leaving Boston at four P. M., and Springfield at seven P. M., would best accommodate the travel from the valley of the Connecticut. A train now runs over the Hartford and New Haven road, leaving Boston at four P. M., with which the New York and New Haven road does not connect.

The committee have stated these arrangements, affecting the connection at New Haven, somewhat at length, because the petitioners deemed that subject of great importance, and counsel, in addition to the regular attorneys for the petition, was heard upon that point, and who urged, in addition to the foregoing considerations, that, under the new mail contracts to be entered into the present season, the mail between New York and Boston will be transported by land; that it is necessary to have a line of connecting railroad upon which to transport it. This state of things not being now in existence, and standing only in supposition, cannot be deemed as forming a present exigency. The committee have no evidence that such an arrangement is even in contemplation, and, if it be made with the two companies, they will each have to perform their own contract, as the com-

mittee suppose, under such penalty as the Postmaster General shall judge suitable; and there is, at present, no particular reason for supposing, that any delay in transporting the mail will be caused by the Hartford and New Haven Company, whose rate of travel per hour exceeds the average of the Massachusetts roads, while that of the New Haven and New York Company falls below that average.

To explain further the prominence which, in this investigation, has been given to the matter of the connection at New Haven, and to the New Haven and New York Road, it may be added, that this company have a lease of the New Haven and Northampton Road, so far as the same is finished with the right to lease the whole line when it shall be completed. And that the New Haven and New York Company have been in negotiation with the Hartford and New Haven Company, for the purpose of uniting the interest of the roads upon some terms, and discontinuing the steamboats. But they have differed upon the details.

From the foregoing facts, the committee conclude, that the objections urged by the petitioners, against the conduct of the Hartford and New Haven Railroad Company, have no substantial foundation, and that the point to which allusion has been before made, is not in any degree changed; and the committee being satisfied, that the Hartford and New Haven Company has sufficient ability to accommodate the whole wants of the public with a mode of travel and transportation from Springfield to New Haven, and that it is in the daily practice of affording such accommodation reasonably and properly; and being satisfied that the local business upon the proposed route, from the State line, through West Springfield, does not demand railroad facilities, they are clearly of opinion, that no exigency exists for a railroad, over the route prayed for, and that it is only upon the existence of such an exigency, that the Commonwealth is authorized to grant a charter for a new road. If a new line should be constructed, to draw, from the Hartford and New Haven Road, any considerable portion of its present business and support, it would operate as a direct and positive injury to the

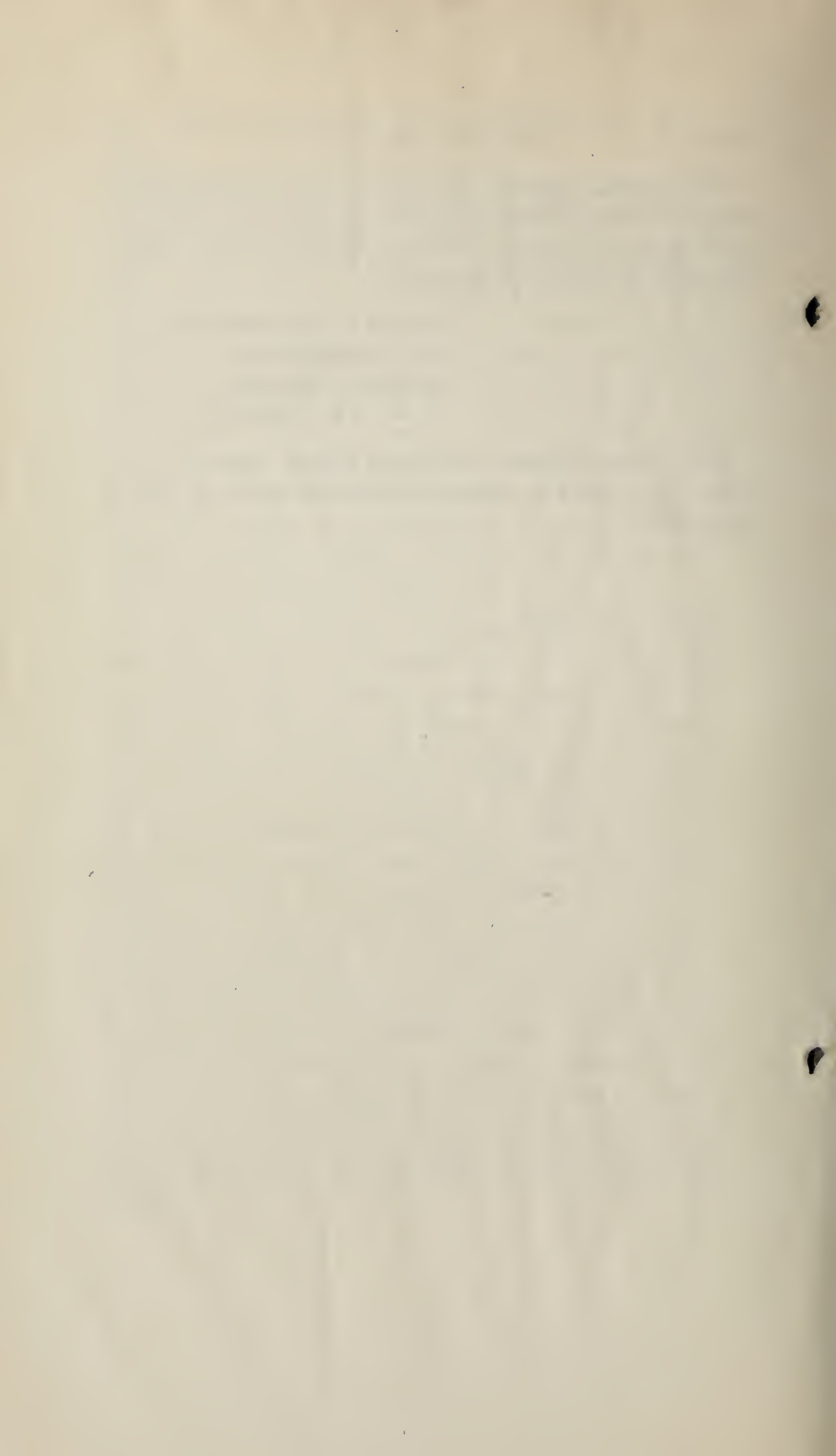
existing company. The committee think that such a result should not be produced, except in a clear and indisputable case of public necessity, and where the road, proposed to be built, would furnish to the public a clear and permanent accommodation, after deducting all the injuries which it may occasion to the proprietors of the other line. For if the business to be done by both can be substantially performed by one, it is manifest that there exists no necessity for the new road, to build which will increase the capital invested for the public accommodation, and such investment can only be made profitable, by increasing the fares. And if, in the first place, it should cause a reduction of fares, by a competition for the business, such rivalry would most likely terminate in an arrangement, by which a monopoly of the travel would be secured for the two lines, and the public ultimately be compelled to maintain both.

The prayer of the petitioners will, if granted, establish the most direct and parallel route for a railroad that has, perhaps, ever been presented to the consideration of the Legislature of this Commonwealth. Although it presents itself in the seductive form of a road of but five miles long, it will, if granted, open a competing line of over sixty miles in extent, and the principle, if established, will be established by Massachusetts. Connecticut has not, by her act in relation to the proposed road, done any thing to weaken the public faith and confidence in her legislation, and the petitioners now refuse to receive from Massachusetts a charter with a route to Westfield, described as in Connecticut, "on or near the canal." By yielding to the application of the petitioners, we may greatly injure that portion of the Hartford and New Haven road which is located and owned in Connecticut; and, in the judgment of the committee, we shall depreciate the value of all railroad property in Massachusetts, prevent the construction of future roads now demanded by the wants of our citizens, and overturn the established decisions of former Legislatures, as will be seen on referring to the report of the committees in the case of Livingston and others, 1845, Senate Doc. 30, and the case of Pingree and others, 1846, Senate Doc. 85.

The committee, therefore, report that, for so much of the subject matter of the petition as relates to the application for authority to construct a railroad in this Commonwealth, the petitioners have leave to withdraw their petition.

TAPPAN WENTWORTH,
E. D. AMMIDOWN,
SIMEON BORDEN,
L. K. STRICKLAND.

Messrs. Soule, Hallock, and Banks, do not concur in so much of this report as refuses the charter of a road to West Springfield.



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